



PERMANENT ADMINISTRATIVE ORDER

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CHAPTER 141
DEPARTMENT OF STATE LANDS

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& LEGISLATIVE COUNSEL

FILING CAPTION: Clarify the Easement rules by dividing the non-trust and the trust land rules.

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RULES:

141-122-0010, 141-122-0020, 141-122-0030, 141-122-0040, 141-122-0050, 141-122-0060, 141-122-0070, 141-122-0080, 141-122-0090, 141-122-0100, 141-122-0105, 141-122-0110, 141-122-0120, 141-122-0130, 141-123-0010, 141-123-0020, 141-123-0030, 141-123-0040, 141-123-0050, 141-123-0060, 141-123-0070, 141-123-0080, 141-123-0090, 141-123-0100, 141-123-0105, 141-123-0110, 141-123-0120

AMEND: 141-122-0010

RULE TITLE: Purpose and Applicability

NOTICE FILED DATE: 07/31/2018

RULE SUMMARY: Remove references to non-trust lands now addressed in 141-123.

RULE TEXT:

(1) These rules:

(a) Govern the granting of easements on state-owned Trust land as specified herein.

(b) Do not apply to the:

(A) Granting of easements for State owned submerged and submersible lands administered under OAR 141-123 (Rules for Granting Easements on Non-Trust Land)

(B) Granting of easements for fiber optic and other cables on state-owned submerged and submersible land within the Territorial Sea, an activity governed by OAR 141-083 (Rules For Granting Easements For Fiber Optic And Other Cables On State-Owned Submerged and Submersible Land Within The Territorial Sea);

(C) Granting of authorizations for hydroelectric projects on state-owned Trust Land, an activity governed by OAR 141-087 (Hydroelectric Projects);

(D) Dedication of roads or rights of way required of the Department or its agents by local government resulting from a local land use approval involving state-owned land; or

(E) Existing valid easements or right of ways granted, by the Department or State Land Board, prior to the adoption of these rules.

(c) Require prior authorization for all uses described under OAR 141-122-0010(2) and (3) unless otherwise exempt from easement under the provisions of OAR 141-122-0010(4) of these rules.

(d) Contain specific provisions relating to the granting of easements by:

- (A) The Department and the Oregon State Forester on Common School Forest Land; and
- (B) The Department to persons who have or will place a structure or facility on state-owned Trust Land necessary to take water for which they have a right to use the water.
- (2) Unless otherwise exempt under the provisions of OAR 141-122-0010(4) of these rules, developments and uses of state-owned land subject to easement include, but are not limited to the following:
- (a) Water, gas, electric and communication service lines (including fiber optic cables) and associated equipment such as pumping stations, transformers and meters;
 - (b) Innerducts and conduits for cables (regardless of whether they contain a cable or are in use);
 - (c) Water supply pipelines, ditches, canals, and flumes;
 - (d) Drainage and irrigation works;
 - (e) Sewer, storm, and cooling water lines, including storm water outfalls and other outfalls;
 - (f) Bridges, skylines, and logging lines;
 - (g) Railroad and light rail track, bridges, stations, depots, and other related facilities;
 - (h) Roads and trails of all types;
 - (i) Overhead transportation lines (for example, skylines, tramways, logging lines, etc.);
 - (j) Storage of materials (for example, sand, gravel, dredge spoils, etc.); and
 - (k) Other encroachments.
- (3) The Department Director may determine that other uses and developments similar to those specified in OAR 141-122-0010(2) are also subject to authorization by, or exempted from an easement and these rules.
- (4) An easement is not required for uses or developments on Trust Land that would require an easement under these rules if the person undertaking the use or owning the development has obtained a valid authorization from the Department pursuant to the provisions of OAR 141-110 (Management and Leasing of Rangeland Forage); OAR 141-125 (Authorizing Special Uses on State-Owned Land), provided the proposed use or development is located on the land which is subject of the authorization, is incidental to the specific use that is the subject of the authorization, and does not result in an additional burden on the land.
- (5) A person who is exempt from obtaining an easement under the provisions of OAR 141-122-0010(4) may apply to obtain an easement, and the Department may authorize an easement even though none is required under these rules. The application shall be processed in accordance with OAR 141-122-0050.

STATUTORY/OTHER AUTHORITY: ORS 273.045

STATUTES/OTHER IMPLEMENTED: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010

AMEND: 141-122-0020

RULE TITLE: Policies

NOTICE FILED DATE: 07/31/2018

RULE SUMMARY: Removed references to non-trust lands, now addressed in 141-123.

RULE TEXT:

(1) Pursuant to Article VIII, Section 5(2) of the Oregon Constitution, the State Land Board, through the Department, has a constitutional responsibility to manage all land (Trust and Non-Trust) under its jurisdiction "with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management."

(2) In addition to the constitutional mandate described in OAR 141-122-0020(1), the Department is required to manage its Trust Land to maximize revenue to the Common School Fund over the long term.

(3) The Department shall follow the guiding principles and resource-specific management prescriptions contained in the Real Estate Asset Management Plan, and consider the comments received from federal, state, and local governments and interested persons when determining whether to authorize or condition an easement on state-owned land.

(4) All uses of state-owned land must conform to applicable local (including local comprehensive land use planning and zoning ordinance requirements), state and federal laws.

(5) No applicant or grantee is allowed to request from any government agency a change in the zoning for, or approved uses of, state-owned land without first applying to, and receiving written approval from the Department.

(6) The Department shall not grant an easement if:

(a) As a result of its circulation for public comment of the application for easement as described in OAR 141-122-0050(4) it determines that the proposed use or development would unreasonably impact uses or developments proposed or already in place within the requested area; or

(b) If the proposed use or development is inconsistent with local, state, or federal laws; or

(c) If the proposed use or development is inconsistent with these rules; or

(d) If the proposed use or development has unacceptable impacts on public health, safety or welfare, or would result in the loss of, or damage to natural, historical, cultural or archaeological resources; or

(e) If the proposed use or development is prohibited by a State Land Board or Department-adopted area closure, use restriction, or area management plan (such as the Lower Willamette River Management Plan; or a Total Maximum Daily Load Implementation Plan); or

(f) If the proposed use or development is inconsistent with any endangered species management plan adopted by the Department under the Oregon Endangered Species Act (ORS 496.171 to 496.192).

(7) The Department shall:

(a) Recognize all valid easements of record on land acquired by the Department as disclosed at the time of acquisition; and

(b) Honor any provisions contained in existing valid easements granted by the Department if the Holder of the easement has complied with all terms and conditions of the easement and applies to the Department for a new easement as prescribed in these rules.

(8) Except as provided in OAR 141-122-0010(4) and OAR 141-122-0100, any person wanting to use or place a development on state-owned land subject to an easement must obtain a written authorization in the form of an easement from the Department prior to beginning the use or placing the development. Additionally, an easement is required for any use or development that encroaches on state-owned land regardless of its height above or below, or manner of crossing the state-owned land.

(9) Unless otherwise exempt by these rules, each individual use of, or development placed on, state-owned land constitutes a separate discrete activity subject to:

(a) An easement specifically authorizing only that individual use or development; and

(b) Payment of compensation as required in these rules.

(10) The Department may, at its discretion, deny an easement if the applicant's financial status or past business practices, or both, indicate that the applicant may not:

- (a) Be able to fully meet the terms and conditions of an easement offered by the Department; or
- (b) Use the land applied for in a way that meets the provisions of OAR 141-122-0020.

(11) The Department may, at its discretion, deny an easement if the applicant is out of compliance with the terms of any authorization issued, or is subject to any enforcement or corrective action, by the Department.

(12) An easement cannot be established on Department-managed land by adverse possession regardless of the length of time the use or development has been in existence.

(13) The Department may:

- (a) Conduct field inspections to determine if the uses and developments in place on state-owned land are authorized by, or conform with, the terms and conditions of an easement and, if not;
- (b) Pursue whatever remedies are available under law and OAR 141-122-0130 to ensure that unauthorized uses subject to an easement on state-owned land are either brought into compliance with the requirements of these rules or removed.

(14) Pursuant to the provisions of ORS 530.490(2) and (3), the Oregon State Forester may issue easements on Common School Forest Land in accordance with these rules (OAR 141-122-0100) and those adopted by the Oregon State Board of Forestry.

STATUTORY/OTHER AUTHORITY: ORS 273.045

STATUTES/OTHER IMPLEMENTED: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010

AMEND: 141-122-0030

RULE TITLE: Definitions

NOTICE FILED DATE: 07/31/2018

RULE SUMMARY: Removed references to non-trust lands, now addressed in 141-123.

RULE TEXT:

- (1) "Applicant" is any person applying for an easement.
- (2) "Appraised Value" means an estimate of current market value of the property (not including improvements) as of a specific date, prepared by a qualified independent appraiser in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) standards.
- (3) "Authorized Area" is the area of state-owned land defined in the easement for which a use is authorized.
- (4) "Cable" means a conductor of electricity or light with insulation, or a combination of conductors insulated from one another within a single jacket or sheath.
- (5) "Circuit" means a system of conductors through which an electric current is intended to flow. A single pole or transmission tower may support one or more circuits, each of which may consist of up to four separate conductors.
- (6) "City" means a city incorporated under ORS 221.020 through 221.100.
- (7) "City Limits" refers to the boundaries of a city incorporated under ORS 221.020 through 221.100.
- (8) "Common School Forest Land" is Trust Land that has been designated or "certified" by the State Land Board and the Oregon Board of Forestry for management by the Oregon Department of Forestry under contract between the State Forester and the State Land Board as allowed in ORS 530.450 through 530.520.
- (9) "Communication Line" is any cable including fiber optic cable which transmits electronic information, telephone or television signals or other data.
- (10) "Comparative Compensatory Payment" is the amount of money paid to owners of parcels that are similar to the state-owned land requested by an applicant for a use that is the same as, or similar to that requested by an applicant. When the applicant's requested use is in, on or over Trust Land, the comparative compensatory payment is the maximum amount of money private landowners receive for the same or similar uses in, on or over parcels that they own that are similar to the Trust Land requested by the applicant.
- (11) "Compensation" or "Compensatory Payment" is the amount of money, or something of equal value, paid or provided for an easement to the Department for the use of Department-managed land.
- (12) "Conduit" is a pipe that protects cables from damage. It may be buried or used in above-ground applications such as bridge crossings. Innerducts may be installed within a conduit to facilitate individual cable installation.
- (13) "Deflector" is a structural barrier such as a groin or jetty projecting into a waterway to divert flow away from and prevent eroding sections of the banks of a waterway.
- (14) "Department" means the Department of State Lands.
- (15) "Development" is any structure or physical facility (for example, each cable, innerduct, innerduct and cable, conduit, conduit and cable, pipeline, electrical line, communication line, bridge, road, fence, ditch, reservoir, or easement-associated building) on state-owned land subject to, or authorized by an easement granted by the Department.
- (16) "Director" means the Director of the Department of State Lands or designee.
- (17) "Domestic Use" means the use of water for human consumption and household purposes that is necessary for the sustenance of an individual, family unit or household. Domestic use may also include water used by an individual family unit or household for heating or cooling purposes.
- (18) "Easement" is an authorization granted by the Department that gives a person the use of a specifically designated parcel of state-owned land for a specific purpose and length of time. An easement does not convey any proprietary or other rights of use to the Holder other than those specifically granted in the easement authorization.
- (19) "Easement for Conservation Purposes" is a type of easement granted by the Department that limits uses to protect the property for conservation values, such as fish and wildlife habitat or other ecosystem processes. The easement for conservation purposes is conveyed by the Department when the applicant is not eligible to hold a Conservation

Easement or otherwise does not conform to ORS 271.715 to 271.775.

(20) "Encroachment" is an unauthorized development or use, such as, but not limited to a structure, fill, or pile of aggregate, that overlaps on, or otherwise occupies or restricts the full use of state-owned land. An encroachment may be a pipe, conduit, or other structure that has been abandoned in place. An encroachment may also occur when the Holder of an easement granted by the Department extends their use outside of the area authorized by that easement or adds a use or development not authorized.

(21) "Erosion Control Structures" mean revetments, attenuators, deflectors, retaining walls, riprap and other structures placed adjacent to or on State Trust Land

(22) "Fiber Optic Cable" means an insulated and often armored cable used to transmit telecommunications through glass fibers using pulses of light.

(23) "Gas Lines and Associated Fixtures" are the pipelines and required compressor and gate stations, valves, meters, regulators, relief stacks, marker posts, rectifiers, and all other related fixtures and equipment necessary to deliver natural gas from the point of origin to the user.

(24) "Governmental Body" means an agency of the Federal Government, the State of Oregon, and every political subdivision thereof as defined in ORS 271.005.

(25) "Holder" means any person who holds a current authorization from the Department for the use of state-owned lands.

(26) "Individual Use" or "Individual Development" is each separate use of, or development placed on state-owned land.

(27) "Innerduct" is tubing that not only protects fiber optic and other types of cables, but also facilitates their installation. It is often placed inside a conduit, or may be buried directly into the ground

(28) "Intake" is a location or structure through which something is taken in, e.g. water in a channel or pipe from a body of water.

(29) "Irrigation" or "Irrigation Use" means the artificial application of water to crops or plants by controlled means to promote growth or to nourish crops or plants. Examples of irrigation uses include, but are not limited to, watering of an agricultural crop, commercial garden, tree farm, orchard, park, golf course play field or vineyard.

(30) "Market Value" means the most probable price, as of a specified date, in cash, or in terms equivalent to cash for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller acting prudently, knowledgeably, and assuming neither is under undue duress.

(31) "Miscellaneous Development" means any development placed upon, over or across state land that is not already defined in these rules (e.g. mailboxes, monitoring wells, Helipads)

(32) "Non-Trust Land" is land managed by the Department other than Trust Land. Examples of Non-Trust Land include state-owned Swamp Land Act Land, and submerged and submersible land [(land below ordinary high water)] under navigable and tidally influenced waterways.

(33) "Outfall" is the point of a drain where it discharges to an area of land or body of water.

(34) "Owner" means a person or legal entity that has a property interest in a structure or land

(35) "Permanent Easement" is a type of easement that is issued in perpetuity.

(36) "Person" includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies as well as any state or other governmental or political subdivision or agency, public corporation, public authority, or Indian Tribe.

(37) "Public Trust Use(s)" means those uses embodied in the Public Trust Doctrine under federal and state law including, but not limited to navigation, recreation, commerce and fisheries, and other uses that support, protect and enhance those uses. Examples of Public Trust Uses include, but are not limited to, short term moorage, camping, bank fishing, picnicking, and boating.

(38) "Real Estate Asset Management Plan" is the plan adopted by the State Land Board that provides the policy direction and management principles to guide both the short and long-term management by the Department of the Common School Fund's real estate assets.

- (39) "Real Market Value for Land" means the current market value of the property (not including improvements) assigned to the land within the tax lot, adjacent riparian tax lot, or comparable tax lot by the county tax assessor.
- (40) "Right of Way" is the legal right, established by grant, to pass along a specific route through grounds or property belonging to another.
- (41) "Right to Use Water" is a water right permit, water right certificate, or a proposed or final order approving a water right permit granted by the Oregon Water Resources Department, or court decree evidencing a water right, authorizing a person to take and use a specific quantity of water for a specific use or uses from a specific location under specific terms and conditions.
- (42) "Roadway" means a road, driveway or any other development for the use of a vehicle.
- (43) "State Land" or "State-Owned Land" is land owned by the State and managed by the Department or its agents and includes Trust Land and Non-Trust Land.
- (44) "State Land Board" means the constitutionally created body consisting of the Governor, Secretary of State, and State Treasurer that is responsible for managing the assets of the Common School Fund as well as for additional functions placed under its jurisdiction by law.
- (45) "Structure or Facility Necessary for the Use of Water" means the pipelines and required stands, pumps, wiring, fish screens, and similar equipment necessary to convey water from the point of diversion to the place of use.
- (46) "Submerged Land" means land lying below the line of ordinary low water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.
- (47) "Submersible Land" means land lying above the line of ordinary low water and below the line of ordinary high water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.
- (48) "Trust Land" is land granted to the state upon its admission into the Union, or obtained by the state as the result of an exchange of Trust Land, or obtained in lieu of originally granted Trust Land, or purchased with trust funds, or obtained through foreclosure of loans using trust funds.
- (49) "Use" means an activity on state-owned lands that requires an easement under these rules.
- (50) "Utility" means water, waste water, gas, electric or communication service lines, fixtures and other related facilities.

STATUTORY/OTHER AUTHORITY: ORS 273.045

STATUTES/OTHER IMPLEMENTED: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010

AMEND: 141-122-0040

RULE TITLE: Easement Application Requirements

NOTICE FILED DATE: 07/31/2018

RULE SUMMARY: Removed references to non-trust lands, now addressed in 141-123.

RULE TEXT:

(1) Except as provided by OAR 141-122-0010(4) (Purpose and Applicability) and 141-122-0100 (Easements Issued on Common School Forest Land), any person wanting to use state-owned land for any of the purposes described in OAR 141-122-0010(2) and (3) must:

(a) Apply to the Department for the easement using a form provided by the Department; and
(b) Submit a non-refundable application fee as provided in OAR 141-122-0040(3) payable to the Department to cover the administrative costs of processing the application and issuing the authorization. When applying for an easement for a structure or facility necessary for the use of water as described in OAR 141-122-0105, a person may submit to the Department a copy of their application to the Department of Water Resources for a right to use water in lieu of using the Department's easement application form.

(2) Unless otherwise exempt under the provisions of OAR 141-122-0010(4) (Purpose and Applicability), each individual use of, or development placed on state-owned land must be authorized by a separate easement specifically authorizing only that use or development.

(a) With regard to a conduit, regardless of the number of innerducts or fiber optic cables contained within the conduit, each cable or innerduct is considered an individual use subject to authorization by an easement.

(b) With regard to electric power transmission lines, one transmission line with one or more circuits will constitute an individual use subject to authorization by an easement. Additional parallel transmission lines owned by the same entity with one or more circuits may be included in the same individual use so long as such parallel lines are located within the designated boundaries of the easement.

(3) The application fee for all easements is as follows:

(a) Utility Easements \$750

(b) All Other Trust Land Easements: \$1,500.00

(c) Application fee for all structures or facilities necessary for the use of water on submerged land subject to an easement is \$125.

(4) A single easement application form may be used to request:

(a) Multiple easements required for a single pipeline, cable, or similar use or development which cross one or more parcels of state-owned land

(b) An easement for all state, county or city-owned bridges within a single county, or

(c) An easement for one or more identical uses or developments which cross the same parcel of state-owned land or state-owned waterway, for example, two parallel pipelines.

(6) An easement application for a conduit must include a cross-sectional drawing that shows the proposed use and the remaining conduit space available for future use.

(7) A fully completed application must be submitted to the Department at least 90 calendar days prior to the proposed use or placement of a development subject to a term easement on state-owned land, unless otherwise allowed by the Director in writing

(8) A fully completed application must be submitted to the Department at least 120 calendar days prior to the proposed use or placement of a development that is eligible for a permanent easement on state-owned land, unless otherwise allowed by the Director in writing.

(9) Any person holding a valid easement (other than a permanent easement) granted by the Department prior to the adoption of these rules who wants to continue holding the authorized area following the expiration of the easement for a use subject to easement must:

(a) Apply to the Department for a new easement and pay the required application fee 180 calendar days prior to the

expiration of the easement as provided in OAR 141-122-0040(1), unless otherwise allowed by the Director in writing;
and

(b) Pay the compensatory payment required by OAR 141-122-0060 at such time that the Department has reviewed and approved the easement application request pursuant to OAR 141-122-0050(9) and (10).

STATUTORY/OTHER AUTHORITY: ORS 273.045

STATUTES/OTHER IMPLEMENTED: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010

AMEND: 141-122-0050

RULE TITLE: Easement Application Review and Approval Process

NOTICE FILED DATE: 07/31/2018

RULE SUMMARY: Removed references to non-trust lands, now addressed in 141-123.

RULE TEXT:

- (1) Department staff may require a meeting to discuss a proposed project and use before performing an application completion review. This meeting may be in person or through other means acceptable to the Department. The Department may invite other government entities and affected stakeholders to take part in an application meeting.
- (2) Upon receipt of an application, and the completion of an application meeting if necessary, the Department will determine whether it is complete. Applications determined to be incomplete will be returned to the applicant with a written explanation of the reason(s) for rejection.
- (3) If a rejected application is resubmitted within 120 calendar days from the date the Department returned it to the applicant, no additional application fee will be assessed.
- (4) If determined by the Department to be complete, the application will be circulated to affected local, state, and federal agencies; Holders of valid authorizations granted by the Department in the requested area; and other interested parties including federally recognized tribal governments and ports for review and comment. As a part of this review, the Department will specifically request comments concerning:
 - (a) The presence, type and location of state or federal listed threatened and endangered species (including candidate species), and archeological and historic resources within the requested area which may be disturbed by the proposed use;
 - (b) Whether the proposed easement use:
 - (A) Conforms with other local, state, and federal law and rules;
 - (B) Conforms with the local comprehensive land use plan and zoning ordinances;
 - (C) Conforms with the general provisions described in OAR 141-122-0020 of these rules; and
 - (D) Would unreasonably impact uses or developments proposed or already in place within the requested area.
- (5) The Department may post a notice of an application and opportunity to comment at a local government building, public library, or other appropriate locations in order to ensure that minority and low-income communities are included and aware of a proposed use. The Department shall make paper or electronic copies of an application available to any person upon request.
- (6) The Department may waive the circulation requirement described in OAR 141-122-0050(4) if:
 - (a) The use or development has been previously reviewed by the listed agencies and other interested persons, and the results are documented in the easement application;
 - (b) The application is for an easement associated with the right to use water and the Water Resources Department is conducting or has conducted a public interest review sufficient to make the determinations required by OAR 141-122-0050(4) or,
 - (c) The application is for an easement for an energy facility that has been granted a site certificate by the Energy Facility Siting Council under ORS 469.300 et seq. and OAR 345-022, et seq. (Regulation of Energy Facilities), in which case the Department will accept the findings and conclusions of the Energy Facility Siting Council in evaluating the easement application over Trust Land.
- (7) An applicant for an easement may be required to amend their application at any time to address issues, concerns, or information needs identified by the Department or other commenters.
- (8) After receipt of agency and public comment concerning the proposed use, the Department will determine, and advise the applicant in writing if:
 - (a) Changes to the requested easement area are necessary to respond to agency or public comment;
 - (b) Additional information is required from the applicant, including but not limited to a survey of:
 - (A) State or federal listed threatened and endangered species (including candidate species) within the requested area;

or

(B) Archaeological and historic resources within the requested area.

(c) The request is denied. Applicants will be given the opportunity to revise their proposed project if the Department denies the request; or

(d) The easement will be granted with specific terms and conditions.

(9) If the Department decides to grant the easement, the written notification will also indicate:

(a) The amount of compensation pursuant to the requirements of OAR 141-122-0060 that the applicant must remit to the Department to obtain the authorization;

(b) Any surety bond or other guarantees of performance in an amount required by the Department pursuant to the provisions of OAR 141-122-0070(12); and

(c) The easement terms and conditions.

(10) The Department will not grant an easement to an applicant until it has received all fees and compensation specified in these rules, and evidence of a surety bond or other guarantees of performance (if required). However, the Department, at its discretion, may grant a provisional easement prior to receipt of compensation due for removal of timber, sand and gravel, or other natural resources in the easement area if the market value of those resources is based on actual receipts from their sale.

(11) The Director may refer unusual or controversial easement applications to the State Land Board for review and approval.

(12) If requested by the Department, an applicant must present evidence to the Department prior to placing the use or development that they have obtained:

(a) All authorizations required by local, state, and federal governing bodies to undertake the proposed use or development; and

(b) Any authorization that may be required to obtain access to, or to cross land belonging to a person other than the Department to undertake the use or development.

STATUTORY/OTHER AUTHORITY: ORS 273.045

STATUTES/OTHER IMPLEMENTED: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010

AMEND: 141-122-0060

RULE TITLE: Compensation

NOTICE FILED DATE: 07/31/2018

RULE SUMMARY: Removed references to non-trust lands, now addressed in 141-123.

RULE TEXT:

(1) Except as provided in OAR 141-122-0060(3), the Department will, prior to granting an easement, require an applicant to submit to the Department a compensatory payment for each individual crossing or use of state-owned land in the greatest of:

(a) 100 percent of the market value of the area requested for the easement if it is on, over or above state-owned upland for uses as defined in OAR 141-122-0010(2) and (3). Market value is either:

(A) Real market value as determined by the county tax assessor for DSL parcel impacted and the benefitting tax lot(s); or

(B) An appraised value that is acceptable to the Department and that has been prepared by a qualified state-certified appraiser.

(b) Minimum compensation fee as follows:

(A) Utilities: \$3,500.00

(B) Roadways: \$2,500.00

(C) Miscellaneous Development: \$1,000.00

(2) If required by the Department, applicants must also submit to the Department a payment in an amount to be determined by the Department for the market value of any commercially valuable timber, sand and gravel, or other natural resources in the easement area which must be removed during or after placement of the proposed use, or which cannot be developed because of the easement use. Such payment shall be due at a date to be determined by the Department.

(3) The Department may, in lieu of a cash compensatory payment, negotiate a non-cash compensatory payment equivalent to or greater than the compensation required under OAR 141-122-0060(1).

STATUTORY/OTHER AUTHORITY: ORS 273.045

STATUTES/OTHER IMPLEMENTED: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010

AMEND: 141-122-0070

RULE TITLE: General Easement Terms And Conditions

NOTICE FILED DATE: 07/31/2018

RULE SUMMARY: Removed references to non-trust lands, now addressed in 141-123.

RULE TEXT:

(1) Easements shall be offered by the Department for the minimum area and term determined by the Department to be required for the requested use or development. Unless otherwise authorized by the Director, the minimum width of an easement shall be no less than 15 feet.

(2) The applicant shall have ninety (90) calendar days from the date of offer to execute an easement with the Department. The Department may revoke the offer after ninety calendar days, at which time the applicant may re-apply for an easement in accordance with OAR 141-122-0040.

(3) The Department may grant additional easements which, as determined by the Department, do not substantially interfere with other authorized easements within a given area.

(4) Easements shall be offered for a term no longer than thirty (30) years unless otherwise authorized by the Director.

(5) The Department may, upon request of the applicant, grant permanent easements only for structures or facilities necessary for the use of water as provided in OAR 141-122-0105.

(6) Requests for permanent easements shall be taken to the State Land Board for review and approval.

(7) An easement granted by the Department will generally be to a specific person for a specific use, location, and term. The Holder of an easement must apply to and obtain prior written approval from the Department as provided in OAR 141-122-0040 prior to:

(a) Changing the authorized use;

(b) Transfer of ownership;

(c) Expanding the number of authorized developments or uses;

(d) Changing the authorized area; or

(e) Permitting other persons to utilize the authorized area for uses and developments requiring separate authorization by the Department (for example, attachment of cables, conduits, or pipes under a bridge already authorized by an easement).

(8) State-owned land authorized for a specific use by an easement will remain open to the public for recreational and other non-proprietary uses unless restricted or closed to public entry by the State Land Board or the Department. An easement Holder may request the Department to partially restrict or close an easement area to partial or total public use if it can be demonstrated to the Department that:

(a) Public entry on the area encumbered by the easement could cause damage to the use of, or development placed on the authorized area; or

(b) The use of the authorized area could cause harm to the public.

(9) The Department or its authorized representative(s) shall have the right to enter into and upon the authorized easement area at any time for the purposes of inspection or management.

(10) Routine right of way maintenance including, but not limited to vegetation trimming and the application of state-approved herbicides will be allowed as specified by the easement conditions. However, except as expressly authorized in writing by the Department, an easement Holder will not otherwise remove any sand, gravel, or other mineral or natural resources within the authorized area for commercial use or sale.

(11) The Holder of an easement must conduct all operations within the authorized area in a manner that conserves fish and wildlife habitat; protects water quality; and does not contribute to soil erosion, or the introduction or spread of noxious weeds or pests. Upon completion of construction, disturbed lands shall be reclaimed as specified by the Department.

(12) The Holder of an easement must maintain all buildings, pipelines, cables, and other developments or items placed in or on state-owned land in a good state of repair.

(13) Applicants for an easement may be required to obtain:

(a) Insurance, bond or other guarantees of performance required by the Department in the exercise of its reasonable discretion if, in the opinion of the Department, the use constitutes a risk to other users of the area, to public safety, or to the State of Oregon, or if required by Oregon state law. The Department may:

(A) Request that the applicant for, or the Holder of an easement provide information concerning the use or development to the Risk Management Division of the Oregon Department of Administrative Services, which may assist the Department in determining the appropriate amount of insurance coverage based on the nature of the use, and

(B) Require that the State of Oregon be named as an additional insured party in any such policy.

(b) A surety bond in an amount to be determined by the Department to ensure that the easement Holder will perform in accordance with all terms and conditions of the authorization; or a cash deposit in an amount equal to the amount required for a surety bond.

(14) Easement Holders must inspect the condition of the easement area and the developments placed on it on a frequency to be determined by the Department in consultation with the easement Holder and other interested parties.

(15) Unless otherwise agreed to in writing in the easement, the Holder of an easement which does not have a permanent term must terminate all use, and remove any or all developments or uses placed within the easement area upon expiration or cancellation of the easement. If the Holder of the easement refuses to terminate their use or remove their developments, the Department may remove them and charge the Holder for doing so.

(16) The Holder of an easement must indemnify the State of Oregon and the Department against any claim or costs arising from or related to a release of a hazardous substance on or from the authorized area resulting from the actions or negligence of the easement Holder.

(17) A term easement exempt from any fees may be subject to the future imposition by the Department of a consideration payment, and/or usage fee to be established by the State Land Board as authorized by law.

STATUTORY/OTHER AUTHORITY: ORS 273.045

STATUTES/OTHER IMPLEMENTED: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010

AMEND: 141-122-0080

RULE TITLE: Assignment of Easements

NOTICE FILED DATE: 07/31/2018

RULE SUMMARY: Removed references to non-trust lands, now addressed in 141-123.

RULE TEXT:

- (1) An easement in good standing is transferable. Prior written consent of the Department is required prior to any transfer of the easement. No transfer may increase the burden on the estate or detract from the value of the underlying state land.
- (2) The Holder of an easement wanting to transfer their easement must submit to the Department:
 - (a) Notice of proposed transfer on a form provided by the Department at least 60 calendar days prior to the date that the transfer is to occur; and
 - (b) Non-refundable transfer processing fee of \$1,000.00 payable to the Department.

STATUTORY/OTHER AUTHORITY: ORS 273.045

STATUTES/OTHER IMPLEMENTED: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010

AMEND: 141-122-0090

RULE TITLE: Termination of an Easement

NOTICE FILED DATE: 07/31/2018

RULE SUMMARY: Removed references to non-trust lands, now addressed in 141-123.

RULE TEXT:

(1) The Department may terminate any easement:

(a) If there is no use of, or development placed on the easement area for five consecutive years;

(b) If the easement is for a structure or facility necessary for the use of water on state-owned land and the associated right to use water is cancelled by the Oregon Water Resources Department or abandoned by the easement Holder. Upon such termination, the Department will notify the easement Holder in writing using the last known address reported by the easement Holder to the Department. This notification will state that the easement has terminated, and that the easement Holder will have 30 calendar days from the date of the notice to respond in writing to the Director why the easement should be reinstated. The Director will notify the easement Holder in writing of his/her decision within 60 calendar days of receipt of the request for reinstatement of the easement; or

(c) If the Holder of the easement fails to comply with these rules or the terms and conditions of the easement, or violates other laws covering the use of their authorized area, the Department will notify the Holder of the easement in writing of the default and demand correction within a specified time frame. If the Holder of an easement fails to correct the default within the time frame specified, the Department may:

(A) Modify or terminate the easement; or

(B) Invoke other remedies as provided in OAR 141-122-0130.

(2) Notwithstanding the provision of OAR 141-122-0090(1), the Department will not terminate a term easement if the Holder of the easement is ready, but unable to commence the requested use within the five-year period due to their inability to obtain other required authorizations within the five-year period.

STATUTORY/OTHER AUTHORITY: ORS 273.045

STATUTES/OTHER IMPLEMENTED: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010

AMEND: 141-122-0100

RULE TITLE: Easements Issued on Common School Forest Land

NOTICE FILED DATE: 07/31/2018

RULE SUMMARY: Removed references to non-trust lands, now addressed in 141-123.

RULE TEXT:

- (1) The Oregon State Forester may issue an easement not to exceed a term of ten years [temporary easements] on certified Common School Forest Land in accordance with applicable statutes and administrative rules.
- (2) Such easements may be issued by the Oregon State Forester for uses such as, but not limited to:
 - (a) Use of roads for forest management purposes;
 - (b) Constructing, improving and/or maintaining temporary roads, including spur roads;
 - (c) Constructing landing sites to deck timber;
 - (d) Use of stumps and/or trees for guide lines and tail holds;
 - (e) Extracting sand, gravel, or quarry rock for the improvement, construction or maintenance of state-owned roads; and
 - (f) Use of existing roads for forest management purposes.
- (3) Any person wanting to obtain an easement on certified Common School Forest Land must apply directly to the Oregon Department of Forestry.
- (4) Any person wanting to obtain an easement on Common School Forest Land for the uses or developments described in OAR 141-122-0010(2) and (3), must apply to the Department pursuant to these rules.

STATUTORY/OTHER AUTHORITY: ORS 273.045

STATUTES/OTHER IMPLEMENTED: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010

AMEND: 141-122-0105

RULE TITLE: Easements For Structures and Facilities Necessary for the Use of Water

NOTICE FILED DATE: 07/31/2018

RULE SUMMARY: Removed references to non-trust lands, now addressed in 141-123.

RULE TEXT:

- (1) An easement is required for all structures and facilities placed on Trust Land managed by the Department that are necessary for the use of water.
- (2) An application received by the Department for an easement for a structure or facility necessary for the use of water will be processed pursuant to the provisions of OAR 141-122-0050 and 141-122-0060 (as applicable) of these rules.
- (3) The Department will allow a person to include up to three water pipelines and associated fixtures per lot of record on their application for an easement.
- (4) An easement issued by the Department under this section will have the same term as that of the associated right to use the water as determined by the Oregon Water Resources Department. Land Board approval will not be required for an easement granted under this section.
- (5) The Department may enter into an agreement with the Oregon Water Resources Department to consolidate the processing of easements for structures or facilities necessary for the use of water with the processing of a right to use water.

STATUTORY/OTHER AUTHORITY: ORS 273.045

STATUTES/OTHER IMPLEMENTED: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010

AMEND: 141-122-0110

RULE TITLE: Unauthorized Uses and Penalties

NOTICE FILED DATE: 07/31/2018

RULE SUMMARY: Removed references to non-trust lands, now addressed in 141-123.

RULE TEXT:

- (1) Uses and developments not authorized by an easement issued by the Department, or by another agency as a valid existing right of record on land acquired by the Department, constitute a trespass and must be removed as directed unless otherwise authorized in writing by the Department.
- (2) In addition to any other penalties provided or permitted by law, the use or placement of any development on state-owned land without the required Department authorization as described in these rules, or which is otherwise not in compliance with these rules, will constitute a trespass and be prosecuted pursuant to governing law.

STATUTORY/OTHER AUTHORITY: ORS 273.045

STATUTES/OTHER IMPLEMENTED: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010

AMEND: 141-122-0120

RULE TITLE: Reconsideration of Decision

NOTICE FILED DATE: 07/31/2018

RULE SUMMARY: Removed references to non-trust lands, now addressed in 141-123.

RULE TEXT:

An applicant or any person adversely affected by the issuance or denial of an easement by the Department may request the Director or the State Land Board, depending on which entity made the decision, to reconsider the decision. A request for reconsideration must be filed in compliance with ORS 183.482 or 183.484.

STATUTORY/OTHER AUTHORITY: ORS 273.045

STATUTES/OTHER IMPLEMENTED: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010

AMEND: 141-122-0130

RULE TITLE: Enforcement Actions; Civil Penalties and Other Remedies

NOTICE FILED DATE: 07/31/2018

RULE SUMMARY: Removed references to non-trust lands, now addressed in 141-123.

RULE TEXT:

(1) The Department may:

(a) Conduct field inspections to determine if uses of, and developments on, Trust Lands are authorized by, or conform with the terms and conditions of an easement and, if not,

(b) Pursue whatever remedies are available under law to ensure that any use that is in violation of the terms or conditions of an easement is either brought into compliance with the requirements of these rules or other applicable law, or removed.

(2) In addition to any other penalty or sanction provided by law, for uses subject to an easement located on Trust Lands, the Director may assess a civil penalty of not more than \$1,000 per day of violation for the following:

(a) Violations of any provision of OAR 141-122 or ORS 273 or 274; or

(b) Violations of any term or condition of a written authorization granted by the Department under ORS 273 and 274.

(3) The Director will give written notice of a civil penalty incurred under OAR 141-122-0130(2) by registered or certified mail to the person incurring the penalty. The notice will include, but not be limited to the following:

(a) The particular section of the statute, rule or written authorization involved;

(b) A short and clear statement of the matter asserted or charged;

(c) A statement of the party's right to request a hearing within 20 calendar days of the notice;

(d) The time allowed to correct a violation; and

(e) A statement of the amount of civil penalty which may be assessed and terms and conditions of payment if the violation is not corrected within the time period stated.

(4) The person incurring the penalty may request a hearing within 20 calendar days of the date of service of the notice provided in OAR 141-122-0130(3). Such request must be in writing. If no written request for a hearing is made within the time allowed, or if the party requesting a hearing fails to appear, the Director may make a final order imposing the penalty.

(5) In imposing a penalty under OAR 141-122-0130 of these rules, the Director will consider the following factors as specified in ORS 274.994:

(a) The history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation;

(b) Any prior violations of statutes, rules, orders and authorizations pertaining to Trust lands, or submerged and submersible lands;

(c) The impact of the violation on Trust Land.

(d) Any other factors determined by the Director to be relevant and consistent with the policy of these rules.

(6) Pursuant to ORS 183.090(2), a civil penalty imposed under OAR 141-122-0130 will become due and payable 10 calendar days after the order imposing the civil penalty becomes final by operation of law or on appeal.

(7) If a civil penalty is not paid as required by OAR 141-122-0130, interest will accrue at the maximum rate allowed by law from the date first due.

STATUTORY/OTHER AUTHORITY: ORS 273.045

STATUTES/OTHER IMPLEMENTED: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010

ADOPT: 141-123-0010

RULE TITLE: Purpose and Applicability

NOTICE FILED DATE: 07/31/2018

RULE SUMMARY: Removed references to non-trust lands in 141-122 and crated 141-123 to address the non-trust lands.

RULE TEXT:

(1) These rules:

(a) Govern the granting and renewal of easements on state-owned Non-Trust land as specified herein.

(b) Do not apply to the:

(A) Granting of easements for State-Owned Trust lands under OAR 141-122 (Rules for Granting Easements on Trust Land)

(B) Granting of easements for fiber optic and other cables on state-owned submerged and submersible land within the Territorial Sea, an activity governed by OAR 141-083 (Rules for Granting Easements for Fiber Optic and Other Cables on State-Owned Submerged and Submersible Land Within the Territorial Sea);

(C) Granting of authorizations for hydroelectric projects on state-owned Non-Trust Land, an activity governed by OAR 141-087 (Hydroelectric Projects);

(D) Granting of authorizations for remediation and habitat restoration activities governed by OAR 141-145 (Rules Governing the Management of State-Owned Submerged and Submersible Land Subject to Remediation and Habitat Restoration Activities);

(E) Granting of authorizations for leases, licenses and registrations for structures on and uses of state-owned submerged and/or submersible lands governed by OAR 141-082 (Rules Governing the Management Of, And Issuing of Leases, Licenses and Registrations for Structures On, And Uses of State-Owned Submerged and Submersible Land).

(F) Dedication of roads or rights-of-way required of the Department or its agents by local government resulting from a local land use approval involving state-owned land; or

(G) Existing valid easements or right of ways granted, by the Department of State Lands (Department) or State Land Board, prior to the adoption of these rules.

(c) Require prior authorization for all uses described under OAR 141-123-0010(2) and (3) unless otherwise exempt from easement under the provisions of OAR 141-123-0010(4) of these rules.

(d) Contain specific provisions relating to the granting of easements by the Department to persons who have or will place a structure or facility on state-owned Non-Trust Land necessary to take water for which they have a right to use.

(2) Unless otherwise exempt under the provisions of OAR 141-123-0010(4) of these rules, developments and uses of state-owned Non-Trust Land subject to easement include, but are not limited to the following:

(a) Water, gas, electric and communication service lines (including fiber optic cables) and associated equipment such as pumping stations, transformers and meters;

(b) Innerducts and conduits for cables (regardless of whether they contain a cable or are in use);

(c) Water supply pipelines, ditches, canals, and flumes;

(d) Drainage and irrigation works;

(e) Sewer, storm, and cooling water lines, including storm water outfalls and other outfalls;

(f) Bridges, skylines, and logging lines;

(g) Railroad and light rail track, bridges, stations, depots, and other related facilities;

(h) Roads and trails of all types;

(i) Overhead transportation lines (for example, tramways, etc.);

(j) Storage of materials (for example, sand, gravel, dredge spoils, etc.); and

(k) Other encroachments

(l) Erosion control structures, dikes, levees, and tide-gates.

(3) The Department Director may determine that other uses and developments similar to those specified in OAR 141-

123-0010(2) are also subject to authorization by, or exempted from, an easement and these rules.

(4) An easement is not required:

(a) For uses or developments on state-owned Non-Trust Land that would require an easement under these rules if the person undertaking the use or owning the development has obtained a valid authorization from the Department pursuant to the provisions of OAR 141-082 (Leasing And Registration Of Structures On, And Uses Of State-Owned Submerged And Submersible Lands); OAR 141-145 (Authorizations For Remediation And Habitat Restoration Activities); or OAR 141-125 (Authorizing Special Uses On State-Owned Land), provided the proposed use or development is located on the land which is subject of the authorization, is incidental to the specific use that is the subject of the authorization, and does not result in an additional burden on the land; or

(b) For any structure or facility necessary for the use of water crossing or situated on state-owned submersible land if the below conditions apply:

(A) The withdrawal is authorized by a valid right to use the water; and

(B) The water is used exclusively for irrigation or domestic use.

(c) For water, gas, electric and communication lines physically attached to and supported by county or state-owned bridges that cross state-owned waterways which are located outside of city limits. If the water, gas, electric and communication lines are located within a city, or cross a state-owned waterway within a city, they are subject to easement unless otherwise exempt by these rules.

(5) A person who is exempt from obtaining an easement under the provisions of OAR 141-123-0010(4) may apply to obtain an easement and the Department may authorize an easement even though none is required under these rules. The application shall be processed in accordance with OAR 141-123-0050.

STATUTORY/OTHER AUTHORITY: ORS 273.045

STATUTES/OTHER IMPLEMENTED: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010

ADOPT: 141-123-0020

RULE TITLE: General Provisions

NOTICE FILED DATE: 07/31/2018

RULE SUMMARY: Removed references to non-trust lands in 141-122 and crated 141-123 to address the non-trust lands.

RULE TEXT:

(1) Pursuant to Article VIII, Section 5(2) of the Oregon Constitution, the State Land Board, through the Department, has a constitutional responsibility to manage all land (Trust and Non-Trust) under its jurisdiction "with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management."

(2) The Department shall follow the guiding principles and resource-specific management prescriptions contained in the Real Estate Asset Management Plan, and consider the comments received from federal, state, and local governments and interested persons when determining whether to authorize or condition an easement on state-owned land.

(3) All tidally influenced and title navigable waterways (referred to as state-owned submerged and submersible land) have been placed by the Oregon State Legislature under the jurisdiction of the State Land Board and the Department, as the administrative arm of the State Land Board.

(4) All references in these rules to "state-owned submerged and submersible land" include state-owned submerged lands or submersible lands or both.

(5) State-owned submerged and submersible land is managed to ensure the collective rights of the public to fully use and enjoy this resource for commerce, navigation, fishing, recreation, and other public trust values. These rights are collectively referred to as "public trust rights".

(6) All uses of state-owned land must conform to applicable local (including local comprehensive land use planning and zoning ordinance requirements), state and federal laws.

(7) No applicant or grantee is allowed to request from any government agency a change in the zoning for, or approved uses of, state-owned land without first applying to and receiving written approval from the Department.

(8) The Department shall not grant an easement if:

(a) As a result of its circulation for public comment of the application for easement as described in OAR 141-123-0050(4) it determines that the proposed use or development would unreasonably impact use or developments proposed or already in place within the requested area; or

(b) If the proposed use or development is inconsistent with local, state, or federal laws; or

(c) If the proposed use or development is inconsistent with these rules; or

(d) If the proposed use or development has unacceptable impacts on public health, safety or welfare, or would result in the loss of, or damage to natural, historical, cultural or archaeological resources, as determined by the Department; or

(e) If the proposed use or development is prohibited by a State Land Board or Department-adopted area closure, use restriction, or area management plan (such as the Lower Willamette River Management Plan; or a Total Maximum Daily Load Implementation Plan); or

(f) If the proposed use or development is inconsistent with any endangered species management plan adopted by the Department under the Oregon Endangered Species Act (ORS 496.171 to 496.192).

(9) The Department may, at its discretion, deny an easement if the applicant's financial status or past business practices, or both, indicate that the applicant may not:

(a) Be able to fully meet the terms and conditions of an easement offered by the Department; or

(b) Use the land applied for in a way that meets the provisions of OAR 141-123-0020.

(10) The Department may, at its discretion, deny an easement if the applicant is out of compliance with the terms and conditions of any previous authorization issued, or is subject to any enforcement or corrective action, by the Department.

(11) The Department shall:

(a) Recognize all valid easements of record on land acquired by the Department as disclosed at the time of acquisition; and

(b) Honor any renewal provisions contained in existing valid easements granted by the Department if the Holder of the easement has complied with all terms and conditions of the easement and applies to the Department for a new easement as prescribed in these rules.

(12) Except as provided in OAR 141-123-0010(4) and OAR 141-123-0100(2), any person wanting to use or place a development on state-owned land subject to an easement must obtain a written authorization in the form of an easement from the Department prior to beginning the use or placing the development. Additionally, an easement is required for any use or development that encroaches on state-owned land regardless of its height above or below, or manner of crossing the state-owned land.

(13) Unless otherwise exempt by these rules, each individual use of, or development placed on, state-owned land constitutes a separate discrete activity subject to:

(a) An easement specifically authorizing only that individual use or development; and

(b) Payment of compensation as required in these rules.

(14) An easement cannot be established on Department-managed land by adverse possession regardless of the length of time the use or development has been in existence.

(15) The Department may:

(a) Conduct field inspections to determine if the uses and developments in place on state-owned land are authorized by, or conform with, the terms and conditions of an easement and, if not;

(b) Pursue whatever remedies are available under law and OAR 141-123-0120 to ensure that unauthorized uses subject to an easement on state-owned land are either brought into compliance with the requirements of these rules or removed.

STATUTORY/OTHER AUTHORITY: ORS 273.045

STATUTES/OTHER IMPLEMENTED: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010

ADOPT: 141-123-0030

RULE TITLE: Definitions

NOTICE FILED DATE: 07/31/2018

RULE SUMMARY: Removed references to non-trust lands in 141-122 and crated 141-123 to address the non-trust lands.

RULE TEXT:

- (1) "Applicant" is any person applying for an easement.
- (2) "Appraised Value" means an estimate of current market value of the property (not including improvements) as of a specific date, prepared by a qualified independent appraiser in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) standards.
- (3) "Authorized Area" is the area of state-owned land defined in the easement for which a use is authorized.
- (4) "Cable" means a conductor of electricity or light with insulation, or a combination of conductors insulated from one another within a single jacket or sheath.
- (5) "Circuit" means a system of conductors through which an electric current is intended to flow. A single pole or transmission tower may support one or more circuits, each of which may consist of up to four separate conductors.
- (6) "City" means a city incorporated under ORS 221.020 through 221.100.
- (7) "City Limits" refers to the boundaries of a city incorporated under ORS 221.020 through 221.100.
- (8) "Communication Line" is any cable including fiber optic cable which transmits electronic information, telephone or television signals or other data.
- (9) "Comparative Compensatory Payment" is the amount of money paid to owners of parcels that are similar to the state-owned land requested by an applicant for a use that is the same as, or similar to that requested by an applicant. When the applicant's requested use is in, on or over Trust Land, the comparative compensatory payment is the maximum amount of money private landowners receive for the same or similar uses in, on or over parcels that they own that are similar to the Trust Land requested by the applicant.
- (10) "Compensation" or "Compensatory Payment" is the amount of money paid or something of equal value provided for an easement to the Department for the use of Department managed land.
- (11) "Conduit" is a pipe that protects cables from damage. It may be buried or used in above-ground applications such as bridge crossings. Innerducts may be installed within a conduit to facilitate individual cable installation.
- (12) "Deflector" is a structural barrier such as a groin or jetty projecting into a waterway to divert flow away from and prevent eroding sections of the banks of a waterway.
- (13) "Department" means the Department of State Lands.
- (14) "Development" is any structure or physical facility (for example, each cable, innerduct, innerduct and cable, conduit, conduit and cable, pipeline, electrical line, communication line, bridge, road, fence, ditch, reservoir, or easement-associated building) on state-owned land subject to or authorized by an easement granted by the Department.
- (15) "Director" means the Director of the Department of State Lands or designee.
- (16) "Domestic Use" means the use of water for human consumption and household purposes that is necessary for the sustenance of an individual, family unit or household. Domestic use may also include water used by an individual family unit or household for heating or cooling purposes.
- (17) "Easement" is an authorization granted by the Department that gives a person the use of a specifically designated parcel of state-owned land for a specific purpose and length of time. An easement does not convey any proprietary or other rights of use to the Holder other than those specifically granted in the easement authorization.
- (18) "Easement for Conservation Purposes" is a type of easement granted by the Department that limits uses to protect the property for conservation values, such as fish and wildlife habitat or other ecosystem processes. The easement for conservation purposes is conveyed by the Department when the applicant is not eligible to hold a Conservation Easement or otherwise does not conform to ORS 271.715 to 271.775.
- (19) "Encroachment" is an unauthorized development or use, such as, but not limited to a structure, fill, or pile of

aggregate, that overlaps on, or otherwise occupies or restricts the full use of state-owned land. An encroachment may be a pipe, conduit, or other structure that has been abandoned in place. An encroachment may also occur when the Holder of an easement granted by the Department extends their use outside of the area authorized by that easement or adds a use or development not authorized.

(20) "Erosion Control Structures" mean revetments, attenuators, deflectors, retaining walls, riprap and other structures placed adjacent to, or on Non-Trust Land.

(21) "Fiber Optic Cable" means an insulated and often armored cable used to transmit telecommunications through glass fibers using pulses of light.

(22) "Gas Lines and Associated Fixtures" are the pipelines and required compressor and gate stations, valves, meters, regulators, relief stacks, marker posts, rectifiers, and all other related fixtures and equipment necessary to deliver natural gas from the point of origin to the user.

(23) "Governmental Body" means an agency of the Federal Government, the State of Oregon, and every political subdivision thereof as defined in ORS 271.005.

(24) "Holder" means any person who holds a current authorization from the Department for the use of state-owned lands.

(25) "Individual Use" or "Individual Development" is each separate use of, or development placed on state-owned land.

(26) "Innerduct" is tubing that not only protects fiber optic and other types of cables, but also facilitates their installation. It is often placed inside a conduit or may be buried directly into the ground.

(27) "Intake" is a location or structure through which something is taken in, e.g. water in a channel or pipe from a body of water.

(28) "Irrigation" or "Irrigation Use" means the artificial application of water to crops or plants by controlled means to promote growth or to nourish crops or plants. Examples of irrigation uses include, but are not limited to, watering of an agricultural crop, commercial garden, tree farm, orchard, park, golf course play field or vineyard.

(29) "Market Value" Means the most probable price, as of a specified date, in cash, or in terms equivalent to cash for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller acting prudently, knowledgeably, and assuming neither is under undue duress.

(30) "Maximum Value Per Square Foot" means the highest price per square foot that the Department may use in determining compensation for easements.

(31) "Multiple-Use Easement" means an authorization issued for a single conduit, through which additional uses may be embedded.

(32) "Non-Trust Land" is land managed by the Department other than Trust Land. Examples of Non-Trust Land include state-owned Swamp Land Act Land, and submerged and submersible land [(land below ordinary high water)] under navigable and tidally influenced waterways.

(33) "Outfall" is the point of a drain where it discharges to an area of land or body of water.

(34) "Owner" means a person or legal entity that has a property interest in a structure or land

(35) "Permanent Easement" is a type of easement that is issued in perpetuity.

(36) "Person" includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies as well as any state or other governmental or political subdivision or agency, public corporation, public authority, or Indian Tribe.

(37) "Public Trust Use(s)" means those uses embodied in the Public Trust Doctrine under federal and state law including, but not limited to navigation, recreation, commerce and fisheries, and other uses that support, protect, and enhance those uses. Examples of Public Trust uses include, but are not limited to, short term moorage, camping, bank fishing, picnicking, and boating.

(38) "'Real Estate Asset Management Plan" is the plan adopted by the State Land Board that provides the policy direction and management principles to guide both the short and long-term management by the Department of the Common School Fund's real estate assets.

- (39) "Real Market Value" for land means the current market value of the property (not including improvements) assigned to the land within the tax lot, adjacent riparian tax lot, or comparable tax lot by the county tax assessor.
- (40) "Right of Way" is the legal right, established by grant, to pass along a specific route through grounds or property belonging to another.
- (41) "Right to Use Water" is a water right permit, water right certificate, or a proposed or final order approving a water right permit granted by the Oregon Water Resources Department, or court decree evidencing a water right, authorizing a person to take and use a specific quantity of water for a specific use or uses from a specific location under specific terms and conditions.
- (42) "Roadway" means a road, driveway, or any other development for the use vehicles or other traffic.
- (43) "Rip-Rap" means crushed rock or concrete placed on the bank of a waterway or lake to prevent or reduce erosion of the bank.
- (44) "Single-Use Easement" means an authorization for a crossing with an individual use.
- (45) "State Land" or "State-Owned Land" is land owned by the State and managed by the Department or its agents and includes Trust Land and Non-Trust Land.
- (46) "State Land Board" means the constitutionally created body consisting of the Governor, Secretary of State, and State Treasurer that is responsible for managing the assets of the Common School Fund as well as for additional functions placed under its jurisdiction by law.
- (47) "Structure or Facility Necessary for the Use of Water" means the pipelines and required stands, pumps, wiring, fish screens, and similar equipment necessary to convey water from the point of diversion to the place of use.
- (48) "Submerged Land" means land lying below the line of ordinary low water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.
- (49) "Submersible Land" means land lying above the line of ordinary low water and below the line of ordinary high water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.
- (50) "Trust Land" is land granted to the state upon its admission into the Union or obtained by the state as the result of an exchange of Trust Land, or obtained in lieu of originally granted Trust Land, or purchased with trust funds, or obtained through foreclosure of loans using trust funds.
- (51) "Use" means an activity on state-owned lands that requires an easement under these rules.
- (52) "Utility" means water, waste water, gas, electric, or communication service lines, fixtures and other related facilities.

STATUTORY/OTHER AUTHORITY: ORS 273.045

STATUTES/OTHER IMPLEMENTED: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010

ADOPT: 141-123-0040

RULE TITLE: Easement Application Requirements

NOTICE FILED DATE: 07/31/2018

RULE SUMMARY: Removed references to non-trust lands in 141-122 and crated 141-123 to address the non-trust lands.

RULE TEXT:

(1) Except as provided by OAR 141-123-0010(4) (Purpose and Applicability) and 141-123-0100 (Easements for Structures and Facilities Necessary for the Use of Water), any person wanting to use state-owned land for any of the purposes described in OAR 141-123-0010(2) and (3) must:

(a) Apply to the Department for the easement using a form provided by the Department; and

(b) Submit a non-refundable application fee as provided in OAR 141-123-0040(3) payable to the Department to cover the administrative costs of processing the application and issuing the authorization. When applying for an easement for a structure or facility necessary for the use of water as described in OAR 141-123-0100, a person may submit to the Department a copy of their application to the Department of Water Resources for a right to use water in lieu of using the Department's easement application form.

(2) Unless otherwise exempt under the provisions of OAR 141-123-0010(4) (Purpose and Applicability), each individual use of, or development placed on state-owned land must be authorized by a separate easement specifically authorizing only that use or development.

(a) With regard to a conduit, regardless of the number of innerducts or fiber optic cables contained within the conduit, each cable or innerduct is considered an individual use subject to authorization by an easement.

(b) With regard to electric power transmission lines, one transmission line with one or more circuits will constitute an individual use subject to authorization by an easement. Additional parallel transmission lines owned by the same entity with one or more circuits may be included in the same individual use so long as such parallel lines are located within the designated boundaries of the easement.

(3) Except as provided by OAR 141-123-0100 (Easements for Structures and Facilities Necessary for the Use of Water) and OAR 141-123-0040(4), the application fee for all term easements is \$750; the application fee for all structures or facilities necessary for the use of water on submerged land subject to an easement is \$125.

(4) There is no application fee for water, gas, electric or communication service lines across non-trust lands outside of city limits.

(5) A single easement application form may be used to request:

(a) An easement for a single pipeline, cable, or similar use or development which crosses one or more parcels of state-owned land.

(b) An easement for all state, county or city-owned bridges within a single county, or

(c) An easement for one or more identical uses or developments which cross the same parcel of state-owned land or state-owned waterway, for example, two parallel pipelines.

(6) An easement application for a conduit must include a cross-sectional drawing that shows the proposed use and the remaining conduit space available for future use.

(7) A fully completed application must be submitted to the Department at least 90 calendar days prior to the proposed use or placement of a development subject to a term easement on state-owned land unless otherwise allowed by the Director in writing,

(8) A fully completed application must be submitted to the Department at least 120 calendar days prior to the proposed use or placement of a development that is eligible for a permanent easement on state-owned land, unless otherwise allowed by the Director in writing.

(9) Any person holding a valid easement (other than a permanent easement) granted by the Department prior to the adoption of these rules who wants to continue holding the authorized area following the expiration of the easement for a use subject to easement must:

- (a) Apply to the Department for a new easement and pay the required application fee 180 calendar days prior to the expiration of the easement as provided in OAR 141-123-0040(1), unless otherwise allowed by the Director in writing; and
- (b) Pay the compensatory payment required by OAR 141-123-0060 at such time that the Department has reviewed and approved the easement application request pursuant to OAR 141-123-0050 (9) and (10).

STATUTORY/OTHER AUTHORITY: ORS 273.045

STATUTES/OTHER IMPLEMENTED: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010

ADOPT: 141-123-0050

RULE TITLE: Easement Application Review and Approval Process

NOTICE FILED DATE: 07/31/2018

RULE SUMMARY: Removed references to non-trust lands in 141-122 and crated 141-123 to address the non-trust lands.

RULE TEXT:

- (1) Department staff may require a meeting to discuss a proposed project and use before performing an application completion review. This meeting may be in person or through other means acceptable to the Department. The Department may invite other government entities and affected stakeholders to take part in an application meeting.
- (2) Upon receipt of an application, and the completion of an application meeting if necessary, the Department will determine whether it is complete. Applications determined to be incomplete will be returned to the applicant with a written explanation of the reason(s) for rejection.
- (3) If a rejected application is resubmitted within 120 calendar days from the date the Department returned it to the applicant, no additional application fee will be assessed.
- (4) If determined by the Department to be complete, the application will be circulated to affected local, state, and federal agencies; Holders of valid authorizations granted by the Department in the requested area; and other interested persons including federally recognized tribal governments and ports for review and comment. As a part of this review, the Department will specifically request comments concerning:
 - (a) The presence, type and location of state or federal listed threatened and endangered species (including candidate species), and archeological and historic resources within the requested area which may be disturbed by the proposed use;
 - (b) Whether the proposed easement use:
 - (A) Conforms with other local, state, and federal law and rules;
 - (B) Conforms with the local comprehensive land use plan and zoning ordinances;
 - (C) Conforms with the general provisions described in OAR 141-123-0020 of these rules; and
 - (D) Would unreasonably impact uses or developments proposed or already in place within the requested area.
- (5) The Department may post a notice of an application and opportunity to comment at a local government building, public library, or other appropriate locations in order to ensure that minority and low-income communities are included and aware of a proposed use. The Department shall make paper copies of an application available to any person upon request.
- (6) The Department may waive the circulation requirement described in OAR 141-123-0050(4) if:
 - (a) The use or development has been previously reviewed by the listed agencies and other interested persons, and the results are documented in the easement application;
 - (b) The application is for an easement associated with the right to use water and the Water Resources Department is conducting or has conducted a public interest review sufficient to make the determinations required by OAR 141-123-0050(4); or
 - (c) The application is for an easement for an energy facility that has been granted a site certificate by the Energy Facility Siting Council under ORS 469.300 et seq. and OAR 345-022, et seq. (Regulation of Energy Facilities), in which case the Department will accept the findings and conclusions of the Energy Facility Siting Council in evaluating the easement application over Non-Trust Land.
- (7) An applicant for an easement may be required to amend their application at any time to address issues, concerns, or information needs identified by the Department or others that provided comments.
- (8) After receipt of agency and public comment concerning the proposed use, the Department will determine, and advise the applicant in writing if:
 - (a) Changes to the requested easement area are necessary to respond to agency or public comment;
 - (b) Additional information is required from the applicant, including but not limited to a survey of:

- (A) State or federal listed threatened and endangered species (including candidate species) within the requested area;
or
(B) Archaeological and historic resources within the requested area.
(c) The request is denied. Applicants will be given the opportunity to revise their proposed project if the Department denies the request; or
(d) The easement will be granted with specific terms and conditions.
(9) If the Department decides to grant the easement, the written notification will also indicate:
(a) The amount of compensation pursuant to the requirements of OAR 141-123-0060 that the applicant must remit to the Department to obtain the authorization;
(b) Any surety bond amount required by the Department pursuant to the provisions of OAR 141-123-0070(13); and
(c) The easement terms and conditions.
(10) The Department will not grant an easement to an applicant until it has received all fees and compensation specified in these rules, and evidence of a surety bond (if required). However, the Department, at its discretion, may grant a provisional easement prior to receipt of compensation due for removal of timber, sand and gravel, or other natural resources in the easement area if the fair market value of those resources is based on actual receipts from their sale.
(11) The Director may refer unusual or controversial easement applications to the State Land Board for review and approval.
(12) If requested by the Department, an applicant must present evidence to the Department prior to placing the use or development that they have obtained:
(a) All authorizations required by local, state, and federal governing bodies to undertake the proposed use or development; and
(b) Any authorization that may be required to obtain access to, or to cross land belonging to a person other than the Department to undertake the use or development.

STATUTORY/OTHER AUTHORITY: ORS 273.045

STATUTES/OTHER IMPLEMENTED: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010

ADOPT: 141-123-0060

RULE TITLE: Compensation

NOTICE FILED DATE: 07/31/2018

RULE SUMMARY: Removed references to non-trust lands in 141-122 and crated 141-123 to address the non-trust lands.

RULE TEXT:

(1) Except as provided in OAR 141-123-0060(11) and (12), the Department will, prior to granting an easement, require an applicant not otherwise exempt under OAR 141-123-0060(6) or as provided in OAR 141-123-0060(10) to submit to the Department a compensatory payment for each individual crossing or use of state-owned land in an amount equal to the greatest of:

(a) For submerged and submersible lands, compensation is based on 33 1/3 percent of the market value of the adjacent riparian tax lots for uses described in OAR 141-123-0010(2) and (3). Market value is either:

(A) An appraised value that is acceptable to the Department; or

(B) The Real Market value of the adjacent riparian tax lots.

(b) \$500; or

(c) The highest Comparative Compensatory Payment.

(2) For all single-use easements on, over, above, or below state submersible or submerged lands, the value per square feet derived from the real market value of the adjacent riparian tax lot(s) shall not exceed the Maximum Value per Square Foot. The Statewide Maximum Value Per Square Foot is \$11.93 starting July 1, 2018, and shall increase each year on July 1st by three percent.

(3) For all multiple-use easements on, over, above, or below state submersible or submerged lands, compensation is based upon the real market value of the adjacent riparian tax lot(s) and is not limited by the Statewide Maximum Value per Square Foot.

(4) For each new individual use, proposed to be embedded in existing conduit authorized by the Department prior to January 1, 2019, compensation is required and the Statewide Maximum Value per Square Foot shall apply.

(5) For each new individual use, proposed to be embedded in existing conduit authorized by the Department after January 1, 2019, no additional compensation is required.

(6) The following types of easements located on Non-Trust Land are exempt from the mandatory compensatory payment to the Department specified in OAR 141-123-0060(1):

(a) State and county-owned bridges located outside of city limits.

(b) Gas, electric and communication line easements located outside of city limits, as allowed by ORS 758.010.

(c) Water ditches; water supply pipes; and water supply mains up to a maximum width of 25 feet on each side of the center line, as allowed by ORS 273.761.

(d) Sanitary pressure mains and storm water pipes and storm water outfalls up to a maximum width of 25 feet on each side of the center line, as allowed by ORS 273.761.

(e) Any structure or facility necessary for the use of water crossing or situated on state-owned submersible land, as allowed by ORS 274.040(3) if:

(A) The withdrawal is authorized by a valid right to use the water; and

(B) The water is used exclusively for irrigation or domestic use.

(7) There is granted to all persons constructing railways built after February 21, 1891, within the boundaries of the state, and to their successors and assigns as allowed by ORS 273.751:

(a) A right of way through any unimproved state lands, of the width of 100 feet, being 50 feet in width on each side of the center line of the road.

(b) All necessary grounds for stations, depots, shops, side tracks, turntables and water stations, not exceeding 10 acres in any one place, upon payment to the state of the sum therefor as fixed by the Department of State Lands.

(c) The right to take, from the lands of this state adjacent to the route lines of the road, material necessary for the

construction of the roads.

(d) The right to construct and maintain railroad bridges over any navigable waters in this state. All bridges crossing navigable waters shall be subject to such regulations, restrictions and compensation as may be fixed by the department and shall be so constructed as not unnecessarily to interfere with navigation.

(8) Compensatory payments shall be required at the rate specified in OAR 141-123-0060(1) for that part of an easement for the uses specified in OAR 141-123-0060(2) and (3) which exceeds the maximum widths or acreages indicated, or occurs on:

(a) Trust Land (under OAR 141-122), or

(b) Other land not exempt from a mandatory compensatory payment.

(9) If required by the Department, applicants must also submit to the Department a payment in an amount to be determined by the Department for the fair market value of any commercially valuable timber, sand and gravel, or other natural resources in the easement area which must be removed during or after placement of the proposed use, or which cannot be developed because of the easement use. Such payment shall be due at a date to be determined by the Department.

(10) The Department may, in lieu of a cash compensatory payment, negotiate a non-cash compensatory payment equivalent to or greater than the compensation required under OAR 141-123-0060(1).

(11) Notwithstanding the provisions of OAR 141-123-0060(1), for state, county and city-owned bridges crossing a state-owned waterway on Non-Trust Land, the required compensation will be:

(a) No compensation for a 30-year easement if none of the bridges listed on a single county application submitted by either the Oregon Department of Transportation or any county is located within a city.

(b) \$100 for a 30-year easement if any bridge listed on a single county application submitted by either the Oregon Department of Transportation or any county is located within a city.

(c) \$100 for a permanent easement for each state, county or city-owned bridge crossing state-owned land if it is located in a city.

(12) Notwithstanding the provisions of OAR 141-123-0060(1), for People's Utility Districts (PUD) structures crossing a state-owned waterway on Non-Trust Land, the required compensation will be:

(a) No compensation for a 30-year easement if the structures are not located within a city.

(b) \$100 for a 30-year easement if the structures are located within a city.

(13) If in the process of calculating compensation, the assessed value is found to be depressed due to the presence of hazardous substances or some other extenuating circumstance(s) as determined by the Department, another comparable upland tax lot shall be selected by the Department as the basis for calculating the compensation. The applicant may suggest a comparable tax lot or may appeal the Department's selection to the Director.

STATUTORY/OTHER AUTHORITY: ORS 273.045

STATUTES/OTHER IMPLEMENTED: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010

ADOPT: 141-123-0070

RULE TITLE: General Easement Terms and Conditions

NOTICE FILED DATE: 07/31/2018

RULE SUMMARY: Removed references to non-trust lands in 141-122 and crated 141-123 to address the non-trust lands.

RULE TEXT:

- (1) Easements shall be offered by the Department for the minimum area and term determined by the Department to be required for the requested use or development. Unless otherwise authorized by the Director, the minimum width of an easement shall be no less than 15 feet.
- (2) The applicant shall have ninety (90) calendar days from the date of offer to execute an easement with the Department. The Department may revoke the offer after ninety calendar days, at which time the applicant may re-apply for an easement in accordance with OAR 141-123-0040.
- (3) The Department may grant additional easements which, as determined by the Department, do not substantially interfere with other authorized easements within a given area.
- (4) Easements shall be offered for a term no longer than thirty (30) years, unless otherwise authorized by the Director.
- (5) The Department may, upon request of the applicant, grant permanent easements only for the following uses of state-owned land:
 - (a) State, county and city-owned bridges if the application contains a full surveyed legal description for each bridge and the appropriate compensation required by these rules; and
 - (b) Structures or facilities necessary for the use of water as provided in OAR 141-123-0100.
 - (6) Requests for permanent easements shall be taken to the State Land Board for review and approval.
 - (7) An easement granted by the Department will generally be to a specific person for a specific use, location, and term. The Holder of an easement must apply to and obtain prior written approval from the Department as provided in OAR 141-123-0040 prior to:
 - (a) Changing the authorized use;
 - (b) Transfer of ownership;
 - (c) Expanding the number of authorized developments or uses;
 - (d) Changing the authorized area; or
 - (e) Permitting other persons to utilize the authorized area for uses and developments requiring separate authorization by the Department (for example, attachment of cables, conduits, or pipes under a bridge already authorized by an easement).
 - (8) State-owned submerged and submersible land must remain open to Public Trust Uses unless a restriction is approved by the Department or other agencies with jurisdiction over navigation or public safety.
 - (a) Notwithstanding the provisions of Division 88, a Holder may close all or a portion of the authorized area to Public Trust Uses, or restrict Public Trust Uses within all or a portion of the authorized area, provided the closure or restriction is:
 - (A) Reasonably necessary to protect persons and property from harm arising from Holder's authorized use of the submerged and submersible land;
 - (B) Limited in duration; and
 - (C) Limited in scope.
 - (b) If the proposed closure or restriction is wholly or partially within the navigation channel of the waterway as established by the United States Coast Guard, or is located in such a way as to increase traffic in or otherwise impact use of the navigation channel, Holder shall consult with the United States Coast Guard, the Oregon Marine Board and any applicable port prior to implementing the closure or restriction. Holder must comply with all requirements imposed by the United States Coast Guard and the Oregon Marine Board.
 - (c) The Holder must provide written notice to the Department no less than fourteen (14) days prior to the

implementation of any closure or restriction. The written notice must identify the need for and the scope, and duration of the closure or restriction, and must certify that Holder has consulted and received approval from the United States Coast Guard and the Oregon Marine Board regarding the closure or restriction.

(d) The Department, in its sole discretion, may at any time require Holder to terminate or modify the closure or restriction. The Department, in its sole discretion, may at any time require the closure or restriction to be established pursuant to OAR 141-088.

(9) The Department or its authorized representative(s) shall have the right to enter into and upon the authorized easement area at any time for the purposes of inspection or management.

(10) Routine right-of-way maintenance including, but not limited to vegetation trimming and the application of state-approved herbicides will be allowed as specified by the easement conditions. However, except as expressly authorized in writing by the Department, an easement Holder will not otherwise remove any sand, gravel, or other mineral or natural resources within the authorized area for commercial use or sale.

(11) The Holder of an easement must conduct all operations within the authorized area in a manner that conserves fish and wildlife habitat; protects water quality; and does not contribute to soil erosion, or the introduction or spread of noxious weeds or pests. Upon completion of construction, disturbed lands shall be reclaimed as specified by the Department.

(12) The Holder of an easement must maintain all buildings, pipelines, cables, and other developments or items placed in or on state-owned land in a good state of repair.

(13) Applicants for an easement may be required to obtain:

(a) Insurance, bond or other guarantees of performance required by the Department in the exercise of its reasonable discretion if, in the opinion of the Department, the use constitutes a risk to other users of the area, to public safety, or to the State of Oregon, or if required by Oregon state law. The Department may:

(A) Request that the applicant for, or the Holder of an easement provide information concerning the use or development to the Risk Management Division of the Oregon Department of Administrative Services, which may assist the Department in determining the appropriate amount of insurance coverage based on the nature of the use, and

(B) Require that the State of Oregon be named as an additional insured party in any such policy.

(b) A surety bond in an amount to be determined by the Department to ensure that the easement Holder will perform in accordance with all terms and conditions of the authorization; or a cash deposit in an amount equal to the amount required for a surety bond.

(14) Easement Holders must inspect the condition of the easement area and the developments placed on it on a frequency to be determined by the Department in consultation with the easement Holder and other interested parties.

(15) Unless otherwise agreed to in writing in the easement, the Holder of an easement which does not have a permanent term must terminate all use and remove any or all developments or uses placed within the easement area upon expiration or cancellation of the easement. If the Holder of the easement refuses to terminate their use or remove their developments, the Department may remove them and charge the Holder for doing so.

(16) The Holder of an easement must indemnify the State of Oregon and the Department against any claim or costs arising from or related to a release of a hazardous substance on or from the authorized area resulting from the actions or negligence of the easement Holder.

(17) A term easement that is exempt from fees may be subject to the future imposition by the Department of a consideration payment, and/or usage fee to be established by the State Land Board as authorized by law.

STATUTORY/OTHER AUTHORITY: ORS 273.045

STATUTES/OTHER IMPLEMENTED: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010

ADOPT: 141-123-0080

RULE TITLE: Transfer of Easements

NOTICE FILED DATE: 07/31/2018

RULE SUMMARY: Removed references to non-trust lands in 141-122 and crated 141-123 to address the non-trust lands.

RULE TEXT:

(1) An easement in good standing is transferable. Prior written consent of the Department is required prior to any transfer of the easement. No transfer may increase the burden on the estate or detract from the value of the underlying state land.

(2) The Holder of an easement wanting to transfer their easement must submit to the Department:

(a) Notice of proposed transfer on a form provided by the Department at least 60 calendar days prior to the date that the transfer is to occur; and

(b) Non-refundable transfer processing fee of \$750 payable to the Department.

STATUTORY/OTHER AUTHORITY: ORS 273.045

STATUTES/OTHER IMPLEMENTED: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010

ADOPT: 141-123-0090

RULE TITLE: Termination of an Easement

NOTICE FILED DATE: 07/31/2018

RULE SUMMARY: Removed references to non-trust lands in 141-122 and crated 141-123 to address the non-trust lands.

RULE TEXT:

(1) The Department may terminate any easement:

(a) If there is no use of, or development placed on the easement area for five consecutive years;

(b) If the easement is for a structure or facility necessary for the use of water on state-owned submerged and submersible land and the associated right to use water is cancelled by the Oregon Water Resources Department or abandoned by the easement Holder. Upon such termination, the Department will notify the easement Holder in writing using the last known address reported by the easement Holder to the Department. This notification will state that the easement has terminated, and that the easement Holder will have 30 calendar days from the date of the notice to respond in writing to the Director why the easement should be reinstated. The Director will notify the easement Holder in writing of his/her decision within 60 calendar days of receipt of the request for reinstatement of the easement; or

(c) If the Holder of the easement fails to comply with these rules or the terms and conditions of the easement, or violates other laws covering the use of their authorized area, the Department will notify the Holder of the easement in writing of the default and demand correction within a specified time frame. If the Holder of an easement fails to correct the default within the time frame specified, the Department may:

(A) Modify or terminate the easement;

(B) Invoke other remedies as provided in OAR 141-123-0120.

(2) Notwithstanding the provision of OAR 141-123-0090(1), the Department will not terminate a term easement if the Holder of the easement is ready, but unable to commence the requested use within the five-year period due to their inability to obtain other required authorizations within the five-year period.

STATUTORY/OTHER AUTHORITY: ORS 273.045

STATUTES/OTHER IMPLEMENTED: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010

ADOPT: 141-123-0100

RULE TITLE: Easements for Structures and Facilities Necessary for the Use of Water

NOTICE FILED DATE: 07/31/2018

RULE SUMMARY: Removed references to non-trust lands in 141-122 and crated 141-123 to address the non-trust lands.

RULE TEXT:

- (1) Except as otherwise provided in OAR 141-123-0100(2), an easement is required for all structures and facilities placed on Non-Trust Land managed by the Department that are necessary for the use of water.
- (2) An easement is not required for those parts of structures and facilities necessary for the use of water placed on state-owned submerged and submersible land managed by the Department if the:
 - (a) Owner of the structures and facilities holds a valid right to use the water, and
 - (b) Water is used exclusively for domestic and/or irrigation purposes.
- (3) Persons who own, use, have placed, intend to place, or have the legal authority to represent the owners or users of structures and facilities necessary for the use of water subject to an easement must apply to the Department for an easement on a form provided by the agency. The applicant must include with the application a non-refundable application fee in the amount of \$125 payable to the Department to cover the administrative costs of processing the application and issuing the easement.
- (4) An application received by the Department for an easement for a structure or facility necessary for the use of water will be processed pursuant to the provisions of OAR 141-123-0050 and 141-123-0060 (as applicable) of these rules.
- (5) The Department will allow a person to include up to three water pipelines and associated fixtures per lot of record on their application for an easement.
- (6) An easement issued by the Department under this section will have the same term as that of the associated right to use the water as determined by the Oregon Water Resources Department. Land Board approval will not be required for an easement granted under this section.
- (7) The Department may enter into an agreement with the Oregon Water Resources Department to consolidate the processing of easements for structures or facilities necessary for the use of water with the processing of a right to use water.

STATUTORY/OTHER AUTHORITY: ORS 273.045

STATUTES/OTHER IMPLEMENTED: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010

ADOPT: 141-123-0105

RULE TITLE: Unauthorized Uses and Penalties

NOTICE FILED DATE: 07/31/2018

RULE SUMMARY: Removed references to non-trust lands in 141-122 and crated 141-123 to address the non-trust lands.

RULE TEXT:

(1) Uses and developments not authorized by an easement issued by the Department, or by another agency as a valid existing right of record on land acquired by the Department, constitute a trespass and must be removed as directed unless otherwise authorized in writing by the Department.

(2) In addition to any other penalties provided or permitted by law, the use or placement of any development on state-owned land without the required Department authorization as described in these rules, or which is otherwise not in compliance with these rules, will constitute a trespass and be prosecuted pursuant to governing law.

STATUTORY/OTHER AUTHORITY: ORS 273.045

STATUTES/OTHER IMPLEMENTED: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010

ADOPT: 141-123-0110

RULE TITLE: Reconsideration of Decision

NOTICE FILED DATE: 07/31/2018

RULE SUMMARY: Removed references to non-trust lands in 141-122 and crated 141-123 to address the non-trust lands.

RULE TEXT:

An applicant or any person adversely affected by the issuance or denial of an easement by the Department may request the Director or the State Land Board, depending on which entity made the decision, to reconsider the decision. A request for reconsideration must be filed in compliance with ORS 183.482 or 183.484.

STATUTORY/OTHER AUTHORITY: ORS 273.045

STATUTES/OTHER IMPLEMENTED: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010

ADOPT: 141-123-0120

RULE TITLE: Enforcement Actions; Civil Penalties and Other Remedies

NOTICE FILED DATE: 07/31/2018

RULE SUMMARY: Removed references to non-trust lands in 141-122 and crated 141-123 to address the non-trust lands.

RULE TEXT:

(1) The Department may:

(a) Conduct field inspections to determine if uses of, and developments on, in or over state-owned submerged and submersible land are authorized by, or conform with the terms and conditions of an easement and, if not,
(b) Pursue whatever remedies are available under law to ensure that any use that is in violation of the terms or conditions of an easement is either brought into compliance with the requirements of these rules or other applicable law, or removed.

(2) In addition to any other penalty or sanction provided by law, for uses subject to easement located on state-owned submerged and submersible land, the Director may assess a civil penalty of not more than \$1,000 per day of violation for the following:

(a) Violations of any provision of OAR 141-123 or ORS 273 or 274; or

(b) Violations of any term or condition of a written authorization granted by the Department under ORS 273 and 274.

(3) The Director will give written notice of a civil penalty incurred under OAR 141-123-0120(2) by registered or certified mail to the person incurring the penalty. The notice will include, but not be limited to the following:

(a) The particular section of the statute, rule or written authorization involved;

(b) A short and clear statement of the matter asserted or charged;

(c) A statement of the party's right to request a hearing within 20 calendar days of the notice;

(d) The time allowed to correct a violation; and

(e) A statement of the amount of civil penalty which may be assessed and terms and conditions of payment if the violation is not corrected within the time period stated.

(4) The person incurring the penalty may request a hearing within 20 calendar days of the date of service of the notice provided in OAR 141-123-0120(3). Such request must be in writing. If no written request for a hearing is made within the time allowed, or if the party requesting a hearing fails to appear, the Director may make a final order imposing the penalty.

(5) In imposing a penalty under OAR 141-123-0120 of these rules, the Director will consider the following factors as specified in ORS 274.994:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation;

(b) Any prior violations of statutes, rules, orders and authorizations pertaining to submerged and submersible land or Trust lands;

(c) The impact of the violation on public trust uses of commerce, navigation, fishing and recreation; and

(d) Any other factors determined by the Director to be relevant and consistent with the policy of these rules.

(6) Pursuant to ORS 183.090(2), a civil penalty imposed under OAR 141-123-0120 will become due and payable 10 calendar days after the order imposing the civil penalty becomes final by operation of law or on appeal.

(7) If a civil penalty is not paid as required by OAR 141-123-0120, interest will accrue at the maximum rate allowed by law from the date first due.

STATUTORY/OTHER AUTHORITY: ORS 273.045

STATUTES/OTHER IMPLEMENTED: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490, 758.010